

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

APPENDIX H

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Bentley A. Hollander

220 West Rittenhouse Square, Apt. 18B

Philadelphia, PA 19103

(b) County of Residence of First Listed Plaintiff Philadelphia

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Ortho-McNeil-Janssen Pharmaceuticals, Inc.

1125 Trenton-Harbourton Road

Titusville, NJ 08560

County of Residence of First Listed Mercer

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Aaron J. Freiwald, Esquire

Layser & Freiwald, P.C. (215) 875-8000

1500 Walnut Street, 18th Fl., Phila., PA 19102

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 1 DEF Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business In Another State ☐ 5 ☒ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395 ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This is an action for false patent marking under Title 35, Section 292, of the United States Code.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44 Reverse (Rev. 12/96)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44**Authority For Civil Cover Sheet**

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States, are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a) Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

BENTLEY A. HOLLANDER
220 West Rittenhouse Square, Apt. 18B
Philadelphia, PA 19103

Plaintiff/Relator

v.

ORTHO-McNEIL-JANSSEN PHARMACEUTICALS, INC.
1125 Trenton-Harbourton Road
Titusville, NJ 08560-200

Defendant.

CIVIL ACTION

No. _____

COMPLAINT

Plaintiff/Relator Bentley A. Hollander, by his undersigned counsel, avers as follows:

Nature of Action

1. This is an action for false patent marking under Title 35, Section 292, of the United States Code.
2. As set forth in detail below, Defendant Ortho-McNeil-Janssen Pharmaceuticals, Inc. ("Ortho") has repeatedly and knowingly violated 35 U.S.C. § 292(a) by falsely marking numerous units of its products for the purpose of deceiving the public into believing that the products were covered by valid patents when, in fact, such patents had expired.
3. Plaintiff seeks the imposition of a fine against Ortho, one half of which shall be paid to the United States of America, as provided for in 25 U.S.C. § 292(b).

The Parties

4. Plaintiff/Relator Bentley A. Hollander (“Hollander”) is an adult individual, residing at 220 West Rittenhouse Square, Apartment 18B, Philadelphia, Pennsylvania 19103.

5. Defendant Ortho is a global pharmaceutical company with headquarters located at 1125 Trenton-Harbourton Road, Titusville, New Jersey 08560-20.

Jurisdiction and Venue

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §§ 1391(c) and 1395(a), because Ortho has conducted business and continues to conduct business in this judicial district, through, among other things, the sale of products that are the subject of this action.

8. Hollander has standing to bring this action pursuant to 35 U.S.C. § 292(b), which provides that “any person” may bring action for civil money penalties for false patent marking.

Factual Background

9. Defendant Ortho is a global pharmaceutical and health care products company, with annual sales in the hundreds of millions of dollars.

10. On information and belief, Defendant Ortho manufactures and sells (or causes to be manufactured and sold) hundreds of thousands of units of its products in the United States, including this judicial district.

11. Defendant Ortho is a sophisticated global healthcare business, competing with other major global healthcare concerns in this country and around the world.

12. As a highly sophisticated business entity, Ortho has extensive experience with the application for, procurement of, and publication of its patents and other intellectual property interests in the United States.

13. Defendant Ortho claims to own or have licenses under a substantial number of patents or patent applications.

The Patents at Issue

14. Ortho manufactures a number of health care related products, including prescription drugs.

15. One of Defendant's products, Risperdone, is a medication used to treat schizophrenia and other mood disturbances.

16. Defendant's product literature and labeling information describe numerous Risperdone formulations, summarized as follows:

<u>NDC No.</u>	<u>Product</u>
50458-300-01	Risperdone tablet (1 mg)(10-tablet pack)
50458-300-06	Risperdone tablet (1 mg)(60-tablet bottle)
50458-300-50	Risperdone tablet (1 mg)(500-tablet bottle)
50458-301-01	Risperdone tablet (0.25 mg)(10-tablet pack)
50458-301-04	Risperdone tablet (0.25 mg)(60-tablet bottle)
50458-301-50	Risperdone tablet (0.25 mg)(500-tablet bottle)
50458-302-01	Risperdone tablet (0.5 mg)(10-tablet pack)
50458-302-06	Risperdone tablet (0.5 mg)(60-tablet bottle)
50458-302-50	Risperdone tablet (0.5 mg)(500-tablet bottle)

50458-305-03	Risperdone solution (30 mL bottle)
50458-315-28	Risperdone orally-disintegrating tablet (1 mg)(7-tablet pack)
50458-315-30	Risperdone orally-disintegrating tablet (1 mg)(30-tablet bottle)
50458-320-01	Risperdone tablet (2 mg)(10-tablet pack)
50458-320-06	Risperdone tablet (2 mg)(60-tablet bottle)
50458-320-50	Risperdone tablet (2 mg)(500-tablet bottle)
50458-325-28	Risperdone orally-disintegrating tablet (2 mg)(7-tablet pack)
50458-330-01	Risperdone tablet (3 mg)(7-tablet pack)
50458-330-06	Risperdone tablet (3 mg)(60-tablet bottle)
50458-330-50	Risperdone tablet (3 mg)(500-tablet bottle)
50458-335-28	Risperdone orally-disintegrating tablet (3 mg)(7-tablet pack)
50458-355-28	Risperdone orally-disintegrating tablet (4 mg)(7-tablet pack)
50458-350-01	Risperdone tablet (2 mg)(10-tablet pack)
50458-350-06	Risperdone tablet (2 mg)(60-tablet bottle)
50458-395-28	Risperdone orally-disintegrating tablet (0.5 mg)(7-tablet pack)
50458-395-30	Risperdone orally-disintegrating tablet (0.5 mg)(30-tablet bottle)

17. Defendant Ortho claims that all of the Risperdone products identified above are covered by U.S. Patent No. 4,804,663 and has held them out as such and continues to hold them out as such.

18. U.S. Patent No. 4,804,663 expired on December 29, 2007.

19. Defendant Ortho has falsely marked and continues to falsely mark its Risperdone products with an expired patent.

20. Ortho knows or reasonably should know that it is falsely marking its Risperdone products with an expired patent.

21. Defendant Ortho also manufactures Nizoral, a medicated dandruff shampoo.

22. Nizoral is marked with U.S. Patent No. 4,335,125.

23. U.S. Patent No. 4,335,125 expired on June 15, 2000.

24. Defendant Ortho also manufactures Terconazole, an antifungal agent used to treat vaginal yeast infections.

25. Terconazole comes in three different formulations, as follows:

<u>NDC No.</u>	<u>Product</u>
0062-5350-01	Terconazole cream (45g tube)
0062-5356-01	Terconazole cream (20g tube)
0062-5351-01	Terconazole suppository (80g)

26. Defendant Ortho claims and holds out each of these Terconazole products as covered by U.S. Patent No. D279,504.

27. U.S. Patent No. D279,504 expired on July 2, 1999.

28. Defendant Ortho also manufactures Ofloxacin, a synthetic chemotherapeutic antibiotic of the fluoroquinolone drug class.

29. Ofloxacin comes in three different product formulations, as follows:

<u>NDC No.</u>	<u>Product</u>
0062-1540-02	Ofloxacin tablets (200 mg)
0062-1541-02	Ofloxacin tablets (300 mg)
0062-1542-02	Ofloxacin tablets (400 mg)

30. Defendant Ortho has held out and continues to hold out each of the Ofloxacin products as being covered by U.S. Patent No. 4,382,892.

31. U.S. Patent No. 4,382,892 expired on September 2, 2003.

32. Defendant Ortho also manufactures Reminyl – now called Razadyne – a drug used for the treatment of mild to moderate dementia associated with Alzheimer's Disease.

33. Razadyne comes in several different product formulations, as follows:

<u>NDC No.</u>	<u>Product</u>
50458-387-30	Galantamine hydrobromide capsules (8 mg)
50458-388-30	Galantamine hydrobromide capsules (16 mg)
50458-389-30	Galantamine hydrobromide capsules (24 mg)
50458-390-10	Galantamine hydrobromide solution (100 mL)
50458-396-60	Galantamine hydrobromide tablets (4 mg)

50458-397-60 Galantamine hydrobromide tablets (8 mg)
50458-398-60 Galantamine hydrobromide tablets (12 mg)

34. Defendant Ortho has marked each of the above Razadyne products, and continues to mark these products, with U.S. Patent No. 4,663,318.

35. U.S. Patent No. 4,663,318 expired on December 14, 2008.

36. Defendant Ortho knows or reasonably should know of the requirements and provisions of 35 U.S.C. §292.

37. Ortho knows or reasonably should know that the purpose of marking a product with a patent number is to put competitors and the public on notice of exclusive and legally enforceable rights as to that product.

38. Upon information and belief, Defendant Ortho has marked and continues to mark many of its products with expired patents for the purpose of deceiving the public and its competitors.

39. By knowingly marking and continuing to mark what are likely millions of units of products with expired patents, Defendant Ortho has injured the sovereign interests of the United States and has discouraged or deterred honest competition and innovation.

40. By knowingly marking and continuing to mark what are likely millions of units of products with expired patents, Defendant Ortho has profited significantly and unjustly, in amounts to be determined during discovery in this case.

COUNT I
False Marking of
50458-300-01 Risperdone tablet (1 mg)(10-tablet pack)

41. The preceding paragraphs are incorporated here by reference.

42. Defendant Ortho manufactures and sells a product identified as 50458-300-01 RISPERDONE TABLET (1 mg)(10-TABLET PACK).

43. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

44. U.S. Patent 4,804,663 expired on December 29, 2007.

45. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

46. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT II
False Marking of
50458-300-06 Risperdone tablet (1 mg)(60-tablet bottle)

47. The preceding paragraphs are incorporated here by reference.

48. Defendant Ortho manufactures and sells a product identified as 50458-300-06 RISPERDONE TABLET (1 mg)(60-TABLET BOTTLE).

49. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

50. U.S. Patent 4,804,663 expired on December 29, 2007.

51. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

52. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT III
False Marking of
50458-300-50 Risperdone tablet (1 mg)(500-tablet bottle)

53. The preceding paragraphs are incorporated here by reference.

54. Defendant Ortho manufactures and sells a product identified as 50458-300-50 RISPERDONE TABLET (1 mg)(500-TABLET BOTTLE).

55. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

56. U.S. Patent 4,804,663 expired on December 29, 2007.

57. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

58. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT IV
False Marking of
50458-301-01 Risperdone tablet (0.25 mg)(10-tablet pack)

59. The preceding paragraphs are incorporated here by reference.

60. Defendant Ortho manufactures and sells a product identified as 50458-301-01 RISPERDONE TABLET (0.25 mg)(10-TABLET PACK).

61. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

62. U.S. Patent 4,804,663 expired on December 29, 2007.

63. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

64. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT V
False Marking of
50458-301-04 Risperdone tablet (0.25 mg)(60-tablet bottle)

65. The preceding paragraphs are incorporated here by reference.

66. Defendant Ortho manufactures and sells a product identified as 50458-301-04 RISPERDONE TABLET (0.25 mg)(60-TABLET BOTTLE).

67. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

68. U.S. Patent 4,804,663 expired on December 29, 2007.

69. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

70. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT VI
False Marking of
50458-301-50 Risperdone tablet (0.25 mg)(500-tablet bottle)

71. The preceding paragraphs are incorporated here by reference.

72. Defendant Ortho manufactures and sells a product identified as 50458-301-50 RISPERDONE TABLET (0.25 mg)(500-TABLET BOTTLE).

73. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

74. U.S. Patent 4,804,663 expired on December 29, 2007.

75. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

76. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT VII
False Marking of
50458-302-01 Risperdone tablet (0.5 mg)(10-tablet pack)

77. The preceding paragraphs are incorporated here by reference.

78. Defendant Ortho manufactures and sells a product identified as 50458-302-01 RISPERDONE TABLET (0.5 mg)(10-TABLET PACK).

79. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

80. U.S. Patent 4,804,663 expired on December 29, 2007.

81. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

82. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT VIII
False Marking of
50458-302-06 Risperdone tablet (0.5 mg)(60-tablet bottle)

83. The preceding paragraphs are incorporated here by reference.

84. Defendant Ortho manufactures and sells a product identified as 50458-302-06 RISPERDONE TABLET (0.5 mg)(60-TABLET BOTTLE).

85. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

86. U.S. Patent 4,804,663 expired on December 29, 2007.

87. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

88. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

**COUNT IX
False Marking of
50458-302-50 Risperdone tablet (0.5 mg)(500-tablet bottle)**

89. The preceding paragraphs are incorporated here by reference.

90. Defendant Ortho manufactures and sells a product identified as 50458-302-50 RISPERDONE TABLET (0.5 mg)(500-TABLET BOTTLE).

91. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

92. U.S. Patent 4,804,663 expired on December 29, 2007.

93. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

94. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT X
False Marking of
50458-305-03 Risperdone solution (30 mL bottle)

95. The preceding paragraphs are incorporated here by reference.

96. Defendant Ortho manufactures and sells a product identified as
50458-305-03 RISPERDONE SOLUTION (30 mL bottle)

97. Defendant Ortho has marked and has continued to mark each unit of
this product with the U.S. Patent No. 4,804,663.

98. U.S. Patent 4,804,663 expired on December 29, 2007.

99. Since December 29, 2007, Defendant Ortho knew or reasonably
should have known that this product was not covered by U.S. Patent 4,804,663.

100. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a)
by marking or causing to be marked each unit of this product with an expired patent
for the purpose of deceiving the public.

COUNT XI
False Marking of
50458-315-28 Risperdone orally-disintegrating tablet (1 mg)(7-tablet pack)

101. The preceding paragraphs are incorporated here by reference.

102. Defendant Ortho manufactures and sells a product identified as
50458-315-28 RISPERDONE ORALLY-DISINTEGRATING TABLET (1 mg)(7-tablet
pack).

103. Defendant Ortho has marked and has continued to mark each unit of
this product with the U.S. Patent No. 4,804,663.

104. U.S. Patent 4,804,663 expired on December 29, 2007.

105. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

106. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XII
False Marking of
50458-315-30 Risperdone orally-disintegrating tablet
(1 mg)(30-tablet bottle)

107. The preceding paragraphs are incorporated here by reference.

108. Defendant Ortho manufactures and sells a product identified as 50458-315-30 RISPERDONE ORALLY-DISINTEGRATING TABLET (1 mg)(30-TABLET BOTTLE).

109. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

110. U.S. Patent 4,804,663 expired on December 29, 2007.

111. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

112. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XIII
False Marking of
50458-320-01 Risperdone tablet (2 mg)(10-tablet pack)

113. The preceding paragraphs are incorporated here by reference.

114. Defendant Ortho manufactures and sells a product identified as 50458-320-01 RISPERDONE TABLET (2 mg)(10-TABLET PACK).

115. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

116. U.S. Patent 4,804,663 expired on December 29, 2007.

117. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

118. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XIV
False Marking of
50458-320-06 Risperdone tablet (2 mg)(60-tablet bottle)

119. The preceding paragraphs are incorporated here by reference.

120. Defendant Ortho manufactures and sells a product identified as 50458-320-06 RISPERDONE TABLET (2 mg)(60-TABLET BOTTLE).

121. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

122. U.S. Patent 4,804,663 expired on December 29, 2007.

123. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

124. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XV
False Marking of
50458-320-50 Risperdone tablet (2 mg)(500-tablet bottle)

125. The preceding paragraphs are incorporated here by reference.

126. Defendant Ortho manufactures and sells a product identified as 50458-320-50 RISPERDONE TABLET (2 mg)(500-TABLET BOTTLE).

127. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

128. U.S. Patent 4,804,663 expired on December 29, 2007.

129. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

130. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XVI
False Marking of
50458-325-28 Risperdone orally-disintegrating tablet
(2 mg)(7-tablet pack)

131. The preceding paragraphs are incorporated here by reference.

132. Defendant Ortho manufactures and sells a product identified as 50458-325-28 RISPERDONE ORALLY-DISINTEGRATING TABLET (2 mg)(7-TABLET PACK).

133. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

134. U.S. Patent 4,804,663 expired on December 29, 2007.

135. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

136. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XVII
False Marking of
50458-330-01 Risperdone tablet (3 mg)(10-tablet pack)

137. The preceding paragraphs are incorporated here by reference.

138. Defendant Ortho manufactures and sells a product identified as 50458-330-01 RISPERDONE TABLET (3 mg)(10-TABLET PACK).

139. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

140. U.S. Patent 4,804,663 expired on December 29, 2007.

141. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

142. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XVIII
False Marking of
50458-330-06 Risperdone tablet (3 mg)(60-tablet bottle)

143. The preceding paragraphs are incorporated here by reference.

144. Defendant Ortho manufactures and sells a product identified as 50458-330-06 RISPERDONE TABLET (3 mg)(60-TABLET BOTTLE).

145. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

146. U.S. Patent 4,804,663 expired on December 29, 2007.

147. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

148. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XIX
False Marking of
50458-330-50 Risperdone tablet (3 mg)(500-tablet bottle)

149. The preceding paragraphs are incorporated here by reference.

150. Defendant Ortho manufactures and sells a product identified as 50458-330-50 RISPERDONE TABLET (3 mg)(500-TABLET BOTTLE).

151. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

152. U.S. Patent 4,804,663 expired on December 29, 2007.

153. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

154. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XX
False Marking of
50458-335-28 Risperdone orally-disintegrating tablet (3 mg)(7-tablet pack)

155. The preceding paragraphs are incorporated here by reference.

156. Defendant Ortho manufactures and sells a product identified as 50458-335-28 RISPERDONE ORALLY-DISINTEGRATING TABLET (3 mg)(7-TABLET PACK).

157. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

158. U.S. Patent 4,804,663 expired on December 29, 2007.

159. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

160. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXI
False Marking of
50458-355-28 Risperdone orally-disintegrating tablet (4 mg)(7-tablet pack)

161. The preceding paragraphs are incorporated here by reference.

162. Defendant Ortho manufactures and sells a product identified as 50458-355-28 RISPERDONE ORALLY-DISINTEGRATING TABLET (4 mg)(7-TABLET PACK).

163. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

164. U.S. Patent 4,804,663 expired on December 29, 2007.

165. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

166. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXII
False Marking of
50458-350-01 Risperdone tablet (2 mg)(10-tablet pack)

167. The preceding paragraphs are incorporated here by reference.

168. Defendant Ortho manufactures and sells a product identified as 50458-350-01 RISPERDONE TABLET (2 mg)(10-TABLET PACK).

169. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

170. U.S. Patent 4,804,663 expired on December 29, 2007.

171. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

172. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXIII
False Marking of
50458-350-06 Risperdone tablet (2 mg)(60-tablet bottle)

173. The preceding paragraphs are incorporated here by reference.

174. Defendant Ortho manufactures and sells a product identified as 50458-350-06 RISPERDONE TABLET (2 mg)(60-TABLET BOTTLE).

175. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

176. U.S. Patent 4,804,663 expired on December 29, 2007.

177. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

178. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXIV
False Marking of
50458-395-28 Risperdone orally-disintegrating tablet (0.5 mg)(7-tablet pack)

179. The preceding paragraphs are incorporated here by reference.

180. Defendant Ortho manufactures and sells a product identified as 50458-395-28 RISPERDONE ORALLY-DISINTEGRATING TABLET (0.5 mg)(7-TABLET PACK).

181. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

182. U.S. Patent 4,804,663 expired on December 29, 2007.

183. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

184. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXV
False Marking of
50458-395-30 Risperdone orally-disintegrating tablet
(0.5 mg)(30-tablet bottle)

185. The preceding paragraphs are incorporated here by reference.

186. Defendant Ortho manufactures and sells a product identified as 50458-395-30 RISPERDONE ORALLY-DISINTEGRATING TABLET (0.5 mg)(30-TABLET BOTTLE).

187. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,804,663.

188. U.S. Patent 4,804,663 expired on December 29, 2007.

189. Since December 29, 2007, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,804,663.

190. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXVI
False Marking of
50458-680-08 Ketocoanzole shampoo (120 mL bottle)

191. The preceding paragraphs are incorporated here by reference.

192. Defendant Ortho manufactures and sells a product identified as 50458-680-08 KETOCOANZOLE SHAMPOO (120 mL BOTTLE), also known as NIZORAL.

193. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,335,125.

194. U.S. Patent 4,335,125 expired on June 15, 2000.

195. Since June 15, 2000, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,335,125.

196. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXVII
False Marking of
0062-5350-01 Terconazole Cream (45g tube)

197. The preceding paragraphs are incorporated here by reference.

198. Defendant Ortho manufactures and sells a product identified as 0062-5350-01 TERCONAZOLE CREAM (45g TUBE), aka TERAZOL.

199. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. D279,504.

200. U.S. Patent D279,504 expired on July 2, 1999.

201. Since July 2, 1999, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent D279,504.

202. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXVIII
False Marking of
0062-5356-01 Terconazole Cream (20g tube)

203. The preceding paragraphs are incorporated here by reference.

204. Defendant Ortho manufactures and sells a product identified as 0062-5356-01 TERCONAZOLE CREAM (20g TUBE), aka TERAZOL.

205. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. D279,504.

206. U.S. Patent D279,504 expired on July 2, 1999.

207. Since July 2, 1999, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent D279,504.

208. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXIX
False Marking of
0062-5351-01 Terconazole Suppository (80 mg)

209. The preceding paragraphs are incorporated here by reference.

210. Defendant Ortho manufactures and sells a product identified as 0062-5351-01 TERCONAZOLE SUPPOSITORY (80 mg), aka TERAZOL.

211. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. D279,504.

212. U.S. Patent D279,504 expired on July 2, 1999.

213. Since July 2, 1999, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent D279,504.

214. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXX
False Marking of
0062-1540-02 Ofloxacin tablets (200 mg)

215. The preceding paragraphs are incorporated here by reference.

216. Defendant Ortho manufactures and sells a product identified as 0062-1540-02 OFLOXACIN TABLETS (200 mg).

217. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,382,892.

218. U.S. Patent 4,382,892 expired on September 2, 2003.

219. Since September 2, 2003, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,382,892.

220. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXXI
False Marking of
0062-1541-02 Ofloxacin tablets (300 mg)

221. The preceding paragraphs are incorporated here by reference.

222. Defendant Ortho manufactures and sells a product identified as 0062-1541-02 OFLOXACIN TABLETS (300 mg).

223. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,382,892.

224. U.S. Patent 4,382,892 expired on September 2, 2003.

225. Since September 2, 2003, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,382,892.

226. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXXII
False Marking of
0062-1542-02 Ofloxacin tablets (400 mg)

227. The preceding paragraphs are incorporated here by reference.

228. Defendant Ortho manufactures and sells a product identified as 0062-1542-02 OFLOXACIN TABLETS (400 mg).

229. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,382,892.

230. U.S. Patent 4,382,892 expired on September 2, 2003.

231. Since September 2, 2003, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,382,892.

232. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXXIII
False Marking of
50458-387-30 Galantamine hydrobromide capsules (8 mg)

233. The preceding paragraphs are incorporated here by reference.

234. Defendant Ortho manufactures and sells a product identified as 50458-387-30 GALANTAMINE HYDROBROMIDE CAPSULES (8 mg).

235. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,663,318.

236. U.S. Patent 4,663,318 expired on December 14, 2008.

237. Since December 14, 2008, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,663,318.

238. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXXIV
False Marking of
50458-388-30 Galantamine hydrobromide capsules (16 mg)

239. The preceding paragraphs are incorporated here by reference.

240. Defendant Ortho manufactures and sells a product identified as 50458-388-30 GALANTAMINE HYDROBROMIDE CAPSULES (16 mg).

241. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,663,318.

242. U.S. Patent 4,663,318 expired on December 14, 2008.

243. Since December 14, 2008, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,663,318.

244. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXXV
False Marking of
50458-389-30 Galantamine hydrobromide capsules (24 mg)

245. The preceding paragraphs are incorporated here by reference.

246. Defendant Ortho manufactures and sells a product identified as 50458-389-30 GALANTAMINE HYDROBROMIDE CAPSULES (24 mg).

247. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,663,318.

248. U.S. Patent 4,663,318 expired on December 14, 2008.

249. Since December 14, 2008, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,663,318.

250. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXXVI
False Marking of
50458-390-10 Galantamine hydrobromide solution (100 mL)

251. The preceding paragraphs are incorporated here by reference.

252. Defendant Ortho manufactures and sells a product identified as 50458-390-10 GALANTAMINE HYDROBROMIDE SOLUTION (100 mL).

253. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,663,318.

254. U.S. Patent 4,663,318 expired on December 14, 2008.

255. Since December 14, 2008, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,663,318.

256. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXXVII
False Marking of
50458-396-60 Galantamine hydrobromide capsules (4 mg)

257. The preceding paragraphs are incorporated here by reference.

258. Defendant Ortho manufactures and sells a product identified as 50458-396-60 GALANTAMINE HYDROBROMIDE CAPSULES (4 mg).

259. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,663,318.

260. U.S. Patent 4,663,318 expired on December 14, 2008.

261. Since December 14, 2008, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,663,318.

262. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXXVIII
False Marking of
50458-397-60 Galantamine hydrobromide capsules (8 mg)

263. The preceding paragraphs are incorporated here by reference.

264. Defendant Ortho manufactures and sells a product identified as 50458-397-60 GALANTAMINE HYDROBROMIDE CAPSULES (8 mg).

265. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,663,318.

266. U.S. Patent 4,663,318 expired on December 14, 2008.

267. Since December 14, 2008, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,663,318.

268. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

COUNT XXXIX
False Marking of
50458-398-60 Galantamine hydrobromide capsules (12 mg)

269. The preceding paragraphs are incorporated here by reference.

270. Defendant Ortho manufactures and sells a product identified as 50458-398-60 GALANTAMINE HYDROBROMIDE CAPSULES (12 mg).

271. Defendant Ortho has marked and has continued to mark each unit of this product with the U.S. Patent No. 4,663,318.

272. U.S. Patent 4,663,318 expired on December 14, 2008.

273. Since December 14, 2008, Defendant Ortho knew or reasonably should have known that this product was not covered by U.S. Patent 4,663,318.

274. Defendant Ortho has violated and continues to violate 35 U.S. § 292(a) by marking or causing to be marked each unit of this product with an expired patent for the purpose of deceiving the public.

Prayer for Relief

WHEREFORE, Plaintiff/Relator Hollander respectfully requests that this Court:

- a. Find that Defendant Ortho's manufacture, advertising, and sale of products with false patent markings or false patent assertions violate 35 U.S.C. § 292(a);
- b. Enter judgment against Ortho and in favor of Hollander;
- c. Determine an appropriate fine, of not more than \$500 per offense, but sufficient to penalize Ortho for violations of § 292(a) and to deter Ortho and others

similarly situated from violating § 292(a) in the future, for each offense of false marking, one half of which shall be paid over to the United States;

- d. Award Hollander the costs associated with this litigation;
- e. Determine that this case is “exceptional” under 35 U.S.C. § 285 and, based on such determination, award Hollander reasonable attorney fees; and
- f. Grant Hollander such other and further relief as the Court may deem just and equitable.

Request for Jury Trial

Pursuant to Fed.R.Civ.P. 38(b)(1), Hollander hereby demands a jury trial on all issues so triable.

Respectfully submitted,

LAYSER & FREIWALD, P.C.

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Attorneys for Plaintiff/Relator
Bentley A. Hollander

DATED: March 1, 2010